

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

TORRANCE UNIFIED SCHOOL
DISTRICT

v.

PARENTS ON BEHALF OF STUDENT.

OAH Case No. 2014060120

PARENTS ON BEHALF OF STUDENT,

v.

TORRANCE UNIFIED SCHOOL
DISTRICT.

OAH Case No. 2014071048

ORDER GRANTING MOTION TO
CONSOLIDATE

On May 28, 2014, Torrance Unified School District (Torrance) filed a Request for Due Process Hearing in OAH case number 2014060120 (First Case), naming Student.

On July 22, 2014, Student filed a Request for Due Process Hearing in OAH case number 2014071048 (Second Case), naming Torrance.

On August 1, 2014, Student filed a Motion to Consolidate the First Case with the Second Case and to continue the due process hearing date set in Case Number 2014060120 (first case), which is presently set to commence on August 26, 2014.

On August 4, 2014, Torrance filed an objection to consolidation on the ground that the motion was not ripe because the time for it to file a Notice of Insufficiency had not run. Torrance filed a Notice of Insufficiency and this order took into consideration the ruling made regarding the sufficiency of Student's complaint, rendering Torrance's ripeness argument moot.

APPLICABLE LAW

Consolidation

No statute or regulation specifically provides a standard for deciding a motion to consolidate special education cases. OAH will generally consolidate matters involving common legal or factual questions, the same parties, and when judicial economy is served by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].)

Continuance

A due process hearing must be conducted and a decision rendered within 45 days of receiving the due process notice unless an extension is granted. (34 C.F.R. § 300.515(a); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3).) Speedy resolution of the due process hearing is mandated by law and continuance of the hearing may be granted only upon a showing of good cause. (Ed. Code, § 56505, subd. (f)(3).) In ruling upon a motion for continuance, OAH is guided by the provisions found within the Administrative Procedure Act and the California Rules of Court that concern motions to continue. (Cal. Code Regs., tit. 1, § 1020; Cal. Rules of Court, rule 3.1332.) Generally, continuances of matters are disfavored. (Cal. Rules of Court, rule 3.1332(c).)

DISCUSSION

Consolidation

Here, the First Case and Second Case involve common legal and factual questions. The single issue raised by Torrance is whether or not the assessments it conducted pursuant to the January 6, 2014, assessment plan were legally sufficient such that Student is not entitled to independent educational assessments at public expense. Similarly, Student alleges Torrance denied him a free appropriate public education for among other things, failing to provide IEEs at public expense after Student objected to the assessments conducted pursuant to the January 6, 2014, assessment plan.

In addition, consolidation furthers judicial economy because the cases involve the same parties and likely many of the same witnesses. Moreover, because each case includes overlapping issues one hearing avoids risking inconsistent rulings. Accordingly, consolidation is granted.

When consolidation is granted, OAH designates one case as the primary case. In this case, OAH Case No. 2014071048, Second Case, is designated as primary and the applicable timelines in that case will apply.

Continuance

A due process hearing must be held, and a decision rendered, within 45 days of receiving the complaint, unless a continuance is granted for good cause. (Ed. Code, §§ 56502, subd. (f) & 56505, subd. (f)(1)(C)(3).)

Student filed a Motion to Continue the consolidated hearing in the event consolidation was granted. Because Student's case is deemed the primary case and it commences on September 16, 2014, after the date originally scheduled in Torrance's case, Student's request for a continuance is moot.

ORDER

1. Student's Motion to Consolidate is granted.
2. All dates previously set in OAH Case Number 2014060120 (First Case) are vacated.
3. The consolidated matter will now be scheduled for mediation on August 27, 2014, from 9:30 AM to 4:30 PM; a telephonic prehearing conference on September 8, 2014, at 1:00 PM; and the due process hearing commencing on September 16, 2014, at 9:30 AM and shall continue day-to-day, Monday through Thursday, as needed at the discretion of the Administrative Law Judge. Subsequent hearing days will begin at 9:00 AM.
4. The timeline for issuing the decision in the consolidated cases shall be based on the filing date in OAH Case Number 2014071048 (Second Case).

DATE: August 6, 2014

/s/

JOY REDMON

Administrative Law Judge

Office of Administrative Hearings